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March 29, 2017

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Mr. Philip A. Lynch  
Director of Special Education Services  
Montgomery County Public Schools  
850 Hungerford Drive, Room 230  
Rockville, Maryland 20850

RE: XXXXX  
Reference: #17-110

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

**ALLEGATION:**

On February 27, 2017, the MSDE received a complaint from Dr. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his son, the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the MCPS did not ensure that the student was provided with the special education instruction in reading in a separate special education classroom as required by the Individualized Education Program (IEP) from August 29, 2016 until October 24, 2016, in accordance with 34 CFR §§300.101 and .323.

**INVESTIGATIVE PROCEDURES:**

1. On February 28, 2017, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant about the allegation to be investigated. On the same date, the MSDE provided a copy of the State

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complaint, by facsimile, to Mr. Philip A. Lynch, Director of Special Education Services, MCPS.

2. On March 2, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. The MSDE also notified Mr. Lynch of the allegation to be investigated and requested that his office review the alleged violation.
3. On March 24, 2017, the MSDE requested documentation from the MCPS.
4. On March 27, 2017, the MCPS provided the MSDE with the requested documents.
5. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated August 23, 2016;
  - b. Correspondence between the complainant and the school staff, dated September 15, 2016;
  - c. Log of the student's schedule for instruction in a separate special education classroom and teacher notes of the work done with the student and other students in a separate special education classroom for September 2016 and October 2016; and
  - d. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on February 27, 2017.

### **BACKGROUND:**

The student is nine (9) years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education and related services (Doc. a).

### **FINDINGS OF FACTS:**

1. The IEP requires that the student be provided with "6 hours 15 minutes of pull out special education services per week in reading" (Doc. a and review of the due process hearing file).
2. On May 1, 2016, the complainant filed a State complaint with the MSDE alleging that the student was not provided with special education instruction in a separate special education classroom (State complaint #16-122). On July 1, 2016, the MSDE issued findings that the student had been provided with special education instruction in reading in a separate special education classroom as required by the IEP, but that he was not provided with special education instruction in math in a separate special education classroom as required by the IEP. As a result, the MSDE required the MCPS to provide the student with compensatory services (Review of the due process hearing file).

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3. On September 23, 2016, the complainant filed a due process complaint with the Maryland Office of Administrative Hearings (OAH) alleging that the compensatory services offered by the MCPS as a result of the State complaint investigation in Complaint #16-122 did not provide the student with a Free Appropriate Public Education (FAPE) (Review of the due process hearing file).
3. On October 25, 2016, the MCPS filed a *Motion to Dismiss or in the Alternative, Motion for Summary Decision*. In that Motion, the MCPS included a Statement of Facts that contains a typographical error with respect to the amount of special education instruction in reading that the IEP requires to be provided in a separate special education classroom. The Statement of Facts includes information that 15 minutes per week instead of 6 hours and 15 minutes per week of services are required. Attached to the Motion, the MCPS submitted the IEP, which states that 6 hours and 15 minutes per week of services are required in reading (Review of the due process hearing file).
4. In response to the MCPS Motion, the complainant sent correspondence to the Administrative Law Judge (ALJ) asserting that the MCPS Motion contained factual errors, including in the Statement of Facts (Review of the due process hearing file).
5. The ALJ found that there was not enough time to hold a hearing on the MCPS Motion prior to the scheduled hearing on the merits of the case (Review of the due process hearing file).
6. A due process hearing was held on November 2 and 3, 2016. As a result, on November 10, 2016, the ALJ issued a finding that the MCPS had provided the student with a FAPE (Review of the due process hearing file).
7. The school staff developed a schedule in response to the complainant's September 15, 2016 request, which, along with written notes, document that the student was provided with the special education instruction in reading in a separate special education classroom in accordance with the IEP during the time period covered by this investigation (Docs. b and c).

#### **DISCUSSION/CONCLUSIONS:**

The public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101 and .323).

Despite the fact that the complainant previously represented to the ALJ that the October 25, 2016 MCPS Motion contained factual errors, the complainant now asserts that the Motion demonstrates that, at the time that it was filed, the student was only being provided with 15 minutes of special education instruction per week in reading in a separate special education classroom (Doc. d and interview with the complainant).

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Based on the Findings of Facts #1 - #8, the MSDE finds that the MCPS Motion contained a typographical error with regard to the amount of special education services required by the IEP. Based on the same Findings of Facts, this office finds that there is documentation that the student was being provided with the special education instruction in reading in the separate special education classroom that was required by the IEP. Therefore, this office does not find that a violation has occurred.

Based on the Finding of Fact #8, the MSDE further finds that the OAH has determined that the student had been provided with a FAPE during the time period covered by this investigation.

**TIMELINE:**

Please be advised that both the complainant and the MCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/Early Intervention Services

MEF:am

c:	Jack R. Smith	XXXXXXXXXX
	Chrisandra A. Richardson	Dori Wilson
	Julie Hall	Anita Mandis
	Tracee N. Hackett	Nancy Birenbaum
	Patricia Grundy	